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Youth Crime briefing

Young people and the Rehabilitation of Offenders Act 1974

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Nacro produces training, research, consultancy, advice, evaluations and information touching a wide range of youth justice issues. For further information contact us on 020 7840 6439.

Nacro Youth Crime
169 Clapham Road
London SW9 0PU
tel: 020 7582 6500
fax: 020 7840 6420
email: infoyc@nacro.org.uk
www.nacro.org.uk

Nacro is a registered charity.
Registration no. 226171
Registered office
169 Clapham Road London SW9 0PU

The *Rehabilitation of Offenders Act 1974* (the Act) enables criminal convictions to become 'spent' after a 'rehabilitation period'. After this period, with certain exceptions (see below), an ex-offender is not normally obliged to mention their conviction when applying for a job, obtaining insurance or in criminal or civil proceedings.

The Act is intended to help people with few and/or minor convictions. People with many convictions, especially serious convictions, may not benefit from the Act unless the convictions are very old. Cautions, reprimands and final warnings, which are not sentences, are not covered by the Act. The Government intends at a future date to include them in a revised Act and give them a rehabilitation period of 'nil', which means they will become spent instantly.

In 2002, the Home Office published *Breaking the Circle*, a review of the Act which proposed that custodial sentences of more than two and a half years (see below) be included in the Act and that rehabilitation periods should be replaced by much shorter 'disclosure periods'.¹ The Government accepted most of the report's proposals though legislation has yet to be introduced. If the Government does eventually introduce legislation based on the review, the Act will be radically different.

This paper sets out the broad provisions of the Act before focusing on those aspects that relate to young offenders, particularly those set out in the Home Office review of the Act.

Rehabilitation periods

The length of the rehabilitation period depends on the sentence given – not the offence committed. For a custodial sentence, the rehabilitation period is decided by the original sentence, not the time served. Custodial sentences of more than two and a half years can never become spent.

There are a great many rehabilitation periods, which have resulted in a complex Act that can be difficult to understand. For example, a variety of rehabilitation periods apply to the sentences set out overleaf in Figures 1 and 2.

As new sentences and orders have been introduced over the years, further complexity has been created. For example, the *Crime and Disorder Act 1998* introduced a new custodial sentence for young people with different rehabilitation periods (see Figure 3 overleaf).

The community order, introduced under s.177 of the *Criminal Justice Act 2003*, will have a two-and-a-half year and five year rehabilitation period for under 18 year olds and those aged 18 or over respectively.

The proposals in the Home Office review aims to simplify the Act to ensure that offenders and employers understand it.

Motoring offences

The rehabilitation period for penalty points following an endorsement is five years. The rehabilitation period for a disqualification is the length of the disqualification. If a person is

Figure 1		
Sentence²	Rehabilitation period	
	People aged under 18 when convicted	People aged 18 or over when convicted
Prison sentences ³ of 6 months or less	3½ years	7 years
Prison sentences ⁴ of more than 6 months to 2½ years	5 years	10 years
Borstal (abolished in 1983)	7 years	7 years
Detention centres (abolished in 1988)	3 years	3 years
Fines, ⁵ compensation, probation, ⁶ community service, ⁷ combination, ⁸ action plan, curfew, drug treatment and testing, and reparation orders	2½ years	5 years
Absolute discharge	6 months	6 months

Figure 2	
Sentence	Rehabilitation period
Probation ⁹ , supervision, care order, ¹⁰ conditional discharge and bind-over	1 year or until the order expires (whichever is longer)
Secure training (abolished in 2000) and attendance centre order	1 year after the order expires
Hospital order (with or without a restriction order)	5 years or 2 years after the order expires (whichever is longer)
Referral order	Once the order expires

Figure 3		
Sentence	Rehabilitation period	
	People aged 12-14 when convicted	People aged 15-17 when convicted
Detention and training order of 6 months or less	1 year after the order expires	3½ years
Detention and training order of more than 6 months	1 year after the order expires	5 years

disqualified at the same time as receiving another penalty, such as a fine, the longer rehabilitation period applies. For example, if a motorist is banned from driving for seven years and fined – which takes five years to become spent – the rehabilitation period would be seven years, not five years.

An endorsement cannot affect the rehabilitation period of a motoring conviction. For example, if a motorist is fined for drink driving and has their licence endorsed, the rehabilitation period would be five years (the length applying to the fine) rather than 11 years (the length of time under the *Road Transport*

Act before a driver convicted of drink-driving is entitled to a clean driving licence).

Multiple offences

The point at which the Act can defeat even experts on the Act relates to further convictions. Many further convictions will extend the rehabilitation periods of earlier convictions, but not all. Whether a rehabilitation period is extended or not depends on whether or not the subsequent offence is a ‘summary’ offence – a minor offence that can only be tried in a magistrates’ court. If a rehabilitation period is still running and the offender commits a summary

offence, the summary offence will not affect the rehabilitation period for the other offence; each offence will expire separately. For example, if someone received a two-year probation order, then one year later was fined for a summary offence, the probation order would become spent before the fine. Therefore once the probation order is spent, only the fine would need to be disclosed until it in turn became spent.

Given that there are a great many criminal offences and no handy, comprehensive guide to them, it can be very difficult to determine which offences are summary and which are not. However, as a general rule, most public order and motoring offences, but not drink-driving, are summary offences. Anything from theft (no matter how minor) upwards is not a summary offence.

If the further offence is a serious one that could be tried in the crown court, then neither conviction (even if the first one is for a summary offence) will become spent until both rehabilitation periods are over. For example, if someone received a two-year probation order, then one year later was fined for a serious offence, both convictions would have to be disclosed until the fine became spent. Offences like theft, and criminal damage of £200 or more, are regarded as serious offences that can be tried in the crown court.

If the further conviction leads to a prison sentence of more than two and a half years, neither conviction will ever become spent. If however the first conviction leads to a prison sentence of more than two-and-a-half years, later convictions with fixed rehabilitation periods will become spent separately. For example, if someone was given a three-year sentence and later received a fine, the conviction for the prison sentence will always have to be disclosed, but the fine would only have to be disclosed for five years.

If an offender receives two or more prison sentences in the course of the same proceedings, the rehabilitation period will depend on whether they are to run concurrently or consecutively. For example, two six-month terms ordered to run consecutively are treated as a single term of 12 months, giving a rehabilitation period of 10 years. But two such sentences ordered to take effect concurrently are treated as one term of six months, giving a rehabilitation period of seven years. Prison sentences ordered to take effect consecutively to sentences already being served are not affected by this rule.

Once a conviction becomes spent, it remains spent, even if a person is convicted of other offences later.

Wiping records

Many people assume that once a conviction is spent, it is wiped from the record. This is not the case. A person's record will still remain on the Police National

Computer (PNC) even after it has become spent – it will not be deleted. Broadly, according to guidelines from the Association of Chief Police Officers (ACPO), records of 'recordable offences' should be deleted after 10 years, unless they show that the offender has three or more convictions, in which case the record will be kept for 20 years. The record will be kept for life where the offender has been:

- given custodial sentences, including suspended sentences, amounting in total to six months or more
- convicted of indecency, sexual offences, violence, possession of class A drugs, or trafficking in, importation of, or supply of any drug
- found unfit to plead by reason of insanity, or has been sentenced under the Mental Health Acts
- convicted of an offence involving a child or vulnerable adult where the *modus operandi* indicates that the person deliberately targets such people.

However, records on the PNC are not wiped automatically. Individuals usually have to carry out 'subject access' checks on themselves under the provisions of the *Data Protection Act* to ensure that those criminal records eligible for wiping are wiped. Few people are aware of the ACPO guidelines. Also, chief constables are not bound by the guidelines so policy and practice will vary between police forces. Similarly, policy and practice in relation to non-recordable offences, which are held by local police forces only, will also vary between forces.

Benefits of the Act

Applying for jobs

The principal benefits of the Act relate to employment. Applicants with a criminal record who are asked on an application form or at an interview whether they have any previous convictions can answer 'no' if the convictions are spent and the job applied for is not 'excepted' from the Act (see *Exceptions to the Act* below). Under the Act, a spent conviction shall not be proper grounds for not employing – or for sacking – someone. If, however, job applicants do not disclose unspent convictions if asked to do so, they may be found out, dismissed on the grounds of having deceived the employer – and possibly prosecuted.

The Act does not provide any means of enforcing a person's right not to be refused employment (or entry into a profession) on the grounds of a spent conviction. However, if an employee can prove that they have been dismissed for a spent conviction and they have been in employment for a year or more, they may be able to claim unfair dismissal under employment legislation.

Housing and insurance

As with employment, if a housing provider asks whether the applicant for a housing place has any previous convictions, the applicant can reply 'no' if the convictions are spent. If an insurance proposal form asks whether the applicant has any previous convictions, the answer can also be 'no' if the convictions are spent. This is the case even if the conviction is relevant to the risk that the insurers will underwrite. For example, spent motoring convictions are not required on a proposal form for motor insurance.

Court proceedings

Previous convictions can be cited in criminal proceedings, even if they are spent. However, the Lord Chief Justice and the Home Office have advised the courts that spent convictions should not be mentioned except in very special circumstances; indeed s.16(2) of the *Children and Young Persons Act 1963* makes special provision restricting the admissibility of convictions committed during childhood in respect of offences committed in adulthood.

In civil proceedings, no one should be asked questions which might lead to disclosure of spent convictions. If such questions are asked, they need not be answered. This rule does not apply:

1. In civil proceedings relating to children (adoption, guardianship, wardship, marriage, custody, care and control, schooling);
2. When the court is satisfied that justice cannot be done unless evidence of spent convictions is admitted (anyone who has spent convictions can always consent to evidence being given about them);
3. If the proceedings involve a matter excepted from the Act (see below).

The rule on civil proceedings also applies to arbitration proceedings, disciplinary proceedings before an administrative tribunal, and to a club committee that has powers to affect anyone's rights, privileges, obligations, or liabilities.

Confidential information

The Act makes it an offence for anyone with access to criminal records to disclose spent convictions unless authorised to do so. The Act makes it a more serious offence to obtain such information by means of fraud, dishonesty or bribe. The *Data Protection Act 1984*, as amended, also makes it an offence to procure or supply confidential computer data. In practice, because someone would be dependent on the police laying charges and the Crown Prosecution Service bringing a prosecution, they will not be able to take any action. However, if the person has spent

convictions, it might be possible to sue for libel anyone making allegations about those convictions, provided that they can prove that the allegations were made with malice.

Exceptions to the Act

There are some offices and occupations in which people are expected to declare their convictions, even if they are spent. Broadly the list of exceptions to the Act covers:

- Those whose duties involve regular contact with children and vulnerable adults
- Certain professions in areas such as health, pharmacy, and the law
- Senior managers and directors in banking and financial services¹¹
- Appointments to jobs where national security may be at risk.

Application forms for posts that are excepted from the Act should always make this clear, although some employers claim posts are excepted when they are not. A list of the key professions, offices, employments and occupations excepted from the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975*, as amended, is set out in the Appendix.

Young offenders and the Act

Many young offenders will be unaware of the rehabilitation periods attached to their sentences or indeed of the Act. Rehabilitation periods are not announced in court, which is something that the Home Office review would like to change. Many professionals involved with young offenders also have a poor understanding of the Act and this is reflected in the advice they give to them. Many young offenders learn about the Act for the first time many years after conviction when completing a Disclosure application form. Many have contacted Nacro's Resettlement *Plus* Helpline dismayed at discovering their conviction on a Disclosure certificate, having previously been advised by a police officer that their conviction would be wiped after three years or when they reached 18 or 21.¹² The high level of misinformation about the Act has had serious consequences for young offenders in later life.

Nevertheless, young offenders aged under 18 at the time of conviction are particular beneficiaries of the Act in the sense that most rehabilitation periods applying to them are half those applying to other offenders. This reflects the fact that the rehabilitation periods applying to 'adult' offenders are bound to appear inordinately long to a young person. It may also reflect recognition that an unspent conviction on a young person's CV may have a disproportionate impact on their ability to secure employment.

Current proposals

As *Breaking the Circle* points out, a young person entering the job market for the first time ‘may have had no other experience with which to demonstrate attributes such as reliability, so important to prospective employers. The lack of employment opportunities, caused by the requirement to disclose their previous convictions, may have a particularly damaging effect on a young person who has had little or no opportunity to demonstrate their worth to their community.’¹³

It was with this in mind, and as part of a package of measures to reduce all rehabilitation or ‘disclosure’ periods, that the Home Office review recommended new periods for juvenile sentences. See Figure 4 below.

In its response to the report of the review, the Government accepted these recommendations, although it rejected a proposal to give young people convicted of minor offences a ‘clean sheet’ at 18, to make it easier for them to secure employment later in life in areas excepted from the Act, notably the ‘caring’ professions.

The proposal to give young offenders a clean sheet at 18 would have gone a little way to reducing the damage that minor convictions (and cautions) do have in later life on the employment prospects of those seeking employment in the caring professions, particularly in health and social care. As a result of the introduction of the Disclosure service, many adults are being refused employment or suspended and dismissed on the basis of juvenile and, usually, old and irrelevant convictions and cautions. Nacro’s helpline deals with such cases every week. In our risk-averse society, many managers and HR professionals are not prepared to take chances with anyone no matter how small the risk, and loss to organisations of valuable staff, because they fear that they will be blamed if anything goes wrong.

Nacro’s Resettlement Plus Helpline provides information and advice about how ex-offenders can find employment, housing and other services, including offering advice to employers about recruiting ex-offenders. The Helpline can be contacted on 020 7840 6464 or helpline@nacro.org.uk.

Figure 4

Sentence	Period of disclosure under ROA	Proposed period of disclosure
Reprimands and final warnings	Never spent	Immediately spent
Absolute discharge	6 months	Immediately spent
Bind-over	The period of the order or min 12 months	Immediately spent
Conditional discharge	The period of the order or min 12 months	The period of the order
Fine	2½ years	1 year
Referral order	The period of the order	The period of the order
Reparation and action plan orders	2½ years	The period of the order
Supervision order	The period of the order or min 12 months	The period of the order
Custody/detention of 6 months or less	3½ years from the date of conviction	The period of sentence plus 1 year
Custody/detention over 6 months to 30 months	5 years from the date of conviction	The period of sentence plus 1 year
Custody/detention over 30 months	Never spent	The period of sentence plus 2 years

Appendix

These are the key professions, offices, employments and occupations exempt from the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975*, as amended:

Professions

Actuary	Nurse, midwife
Barrister (in England and Wales), advocate (in Scotland), solicitor	Ophthalmic optician, dispensing optician
Chartered accountant, certified accountant	Pharmaceutical chemist
Chartered psychologist	Registered chiropractor
Dentist, dental hygienist, dental auxiliary	Registered osteopath
Legal executive	Registered teacher (in Scotland)
Medical practitioner	Veterinary surgeon

Offices and employments

Care services to vulnerable adults ¹⁴	Prison staff
Health service appointments	Probation officers
Judicial appointments	Traffic wardens
Justices' chief executives, justices' clerks and their assistants	Work with under-18-year-olds ¹⁵
Police constables	

Regulated occupations

Taxi driver	
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References

- 1 Home Office (2002), *Breaking the Circle: A Report of the Review of the Rehabilitation of Offenders Act*, Home Office: London
- 2 A deferred sentence is not listed here because it is not a sentence that attracts a rehabilitation period. Rather, the rehabilitation period will be the one applicable to the sentence that is finally imposed after the deferment.
- 3 Including suspended sentences, youth custody (abolished in 1988) and detention in a young offender institution (abolished for those under 18 years old in 2000 and for those aged 18-20 in 2001).
- 4 As footnote 3. Note also that under s.85 of the *Powers of the Criminal Courts (Sentencing) Act*, an extended sentence (ie extended period on licence following a prison sentence) for a violent or sexual offence can extend the rehabilitation period for a conviction.
- 5 Even if subsequently imprisoned for fine default.
- 6 For people convicted on or after 3 February 1995. Probation orders are now called community rehabilitation orders.
- 7 Community service orders are now called community punishment orders.
- 8 Combination orders are now called community punishment and rehabilitation orders.
- 9 For people convicted before 3 February 1995.
- 10 Care orders in criminal proceedings were abolished by the *Children Act 1989* and effectively replaced by a supervision order with residence requirement.
- 11 A senior manager in financial services is an individual other than a director: (1) who is employed by a firm or a body corporate within a group of which the firm is a member (2) to whom the governing body of the firm, or a member of the governing body of the firm, has given responsibility for management and supervision (3) who, if the individual is employed by the firm, reports directly to the governing body, or a member of the body, or the chief executive, or the head of a significant business unit and (4) who, if the individual is employed by a body corporate within the group, reports directly to a person who is the equivalent of a body or person referred to in 3.
- 12 This suggests that police officers confuse rehabilitation periods with the old police weeding guidelines as they used to apply to cautions given to juveniles.
- 13 Para 5.18, page 42
- 14 'Care services' means: (1) accommodation and nursing or personal care in a care home (2) personal care or nursing or support for a person to live independently in his own home (3) social care services, or (4) any services provided in an establishment catering for a person with learning difficulties. 'Vulnerable adult' means a person aged 18 or over who has a condition of the following type: (1) a substantial learning or physical disability (2) a physical or mental illness or mental disorder, chronic or otherwise, including an addiction to alcohol or drugs, or (3) a significant reduction in physical or mental capacity.
- 15 This is any work which is: (1) work in a regulated position, as defined by s.36 of the *Criminal Justice and Court Services Act 2000* (a full list of areas of employment which constitute a 'regulated position' is given in the Home Office Protection of Children Guidance on the Act) and (2) work in a further education institution where the normal duties of that work involve regular contact with persons aged under 18.

